



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2019-01;

Exemption Application No. D-11988]

Exemption Involving UBS Assets Management (Americas) Inc.;

UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS

O'Connor LLC; and Certain Future Affiliates in UBS's Asset

Management and Global Wealth Management U.S. Divisions

(collectively, the Applicants or the UBS QPAMs)

Located in Chicago, Illinois; Hartford, Connecticut; New

York, New York; and Chicago, Illinois, Respectively

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). The exemption affects the ability of certain entities with specified relationships to UBS, UBS

Securities Japan, and UBS France to continue to rely upon relief provided by Prohibited Transaction Exemption 84-14.

DATES: This exemption will be in effect for one year from the date of the judgment in the French First Instance Court against UBS and/or UBS France in case number 1105592033.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department at (202) 693-8402. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 13, 2019, the Department published a notice of proposed exemption in the Federal Register at 84 FR 3818, for certain entities with specified relationships to UBS to continue to rely upon the relief provided by PTE 84-14 for a period of one year,¹ notwithstanding certain criminal convictions, as described herein (the Convictions) and the 2019 French Judgment Against UBS/UBS France.

The Department is granting this exemption to ensure that Covered Plans² with assets managed by an asset manager

¹ 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

² "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a UBS QPAM relies on PTE 84-14, or with

within the corporate family of UBS may continue to benefit from the relief provided by PTE 84-14. This exemption will be in effect for one year from the date of the judgment in the French First Instance Court against UBS and/or UBS France. No inference should be drawn from the Department's granting of this one-year exemption that the Department will grant additional relief for UBS QPAMs to continue to rely on the relief in PTE 84-14 following the end of the one-year period.

No relief from a violation of any other law is provided by this exemption, including any criminal convictions or criminal conduct described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions or the 2019 French Judgment Against UBS/UBS France) during the Exemption Period. The terms of this exemption are designed to

respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a UBS QPAM. The Department notes that its determination that the requisite findings under ERISA section 408(a) have been met is premised on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicants requested an individual exemption pursuant to section 408(a) of ERISA and section 4975(c) (2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section

4975(c)(2) of the Code to the Secretary of Labor.

Accordingly, this exemption is being granted solely by the Department.

Department's Comment

The Department cautions that the relief in this exemption will terminate immediately if an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions and the 2019 French Judgment Against UBS/UBS France) during the Exemption Period. Although the UBS QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction, or the expiration of this exemption without additional relief, or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the Federal Register at 84 FR 3818 on February 13, 2019. All comments and requests for a hearing were due by February 19, 2019. The Department received written comments from the Applicant, the National Federation of Independent Business (NFIB), the Securities Industry and Financial Markets Association (SIFMA), and two members of the public. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, with revisions, as described below.

UBS QPAMs Comments:

1. Effective Date and Notification Requirement.

A. The UBS QPAMs have also requested that the Department issue an Advisory Opinion stating that an adverse judgment in the French First Instance Court would not constitute a conviction within the meaning of Section I(g) of PTE 84-14. The UBS QPAMs argue that if the

Department determines that the French First Instance Court judgment does not constitute a conviction under Section I(g) of PTE 84-14 either because convictions in a foreign jurisdiction generally are not covered by Section I(g), or because the French First Instance Court's judgment, in particular, would not constitute a conviction under Section I(g), then the one year exemption will have been unnecessary as there would be no conviction for which an exemption is required. In that case, the UBS QPAMs state that the conditions of PTE 2017-07 should continue to be effective. The UBS QPAMs request that the Department revise the exemption to make clear that the exemption will expire automatically to the extent the Department issues an Advisory Opinion stating that the Potential 2019 French Judgment Against UBS/UBS France does not constitute a conviction for purposes of Section I(g) of PTE 84-14.

B. Additionally, the UBS QPAMs request that section I(k) of the exemption be revised so that the UBS QPAMs are not required to send notice within 60 days of the Potential 2019 French Judgment Against UBS/UBS France if the Department has not issued an Advisory Opinion within 60

days of the French First Instance Court's judgment.³ The UBS QPAMs argue that the notice should be required by the later of 60 days from the date of judgment in the French First Instance Court or 30 days after an advisory opinion is issued by the Department that is adverse to the UBS QPAMs advisory opinion request. The UBS QPAMs argue this would avoid the necessity of requiring the UBS QPAMs to spend a significant amount of time and resources notifying plans of an exemption that would be inoperative and avoid disclosure of information that would ultimately be superseded by an advisory opinion and require correction.

³ Proposed Section I(k) provides that: Within 60 days of the judgment against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and the Potential 2019 French Judgment Against UBS/UBS France, each separately result in a failure to meet a condition in PTE 84-14 and PTE 2017-07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Effective as of the date that is 60 days after the Potential 2019 French Judgment Against UBS/UBS France Date, all Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically;

The UBS QPAMs also request similar revisions to the notice provision in Section I(j) (7).⁴

Department's Response to Comment A. The Department declines to revise the proposed exemption as requested by the UBS QPAMs. The Department has construed Section I(g) as extending to foreign convictions⁵ and granted new exemptions to convicted entities on the basis that foreign convictions were disqualifying under I(g).⁶ In addition, although UBS

⁴ Section I(j) (7) requires: Within six months of the date of the judgment against UBS or UBS France by the French First Instance Court, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the date of such a judgment, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-17 and/or PTE 2017-07 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

⁵ The purpose and intent of Section I(g) is explained in the Preamble to Proposed Prohibited Transaction Exemption 84-14, 47 Fed. Reg. 56945, 56947 (Dec. 21, 1982). That explanation provides: "A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity. Accordingly, the proposed exemption does not cover transactions if the QPAM or various affiliates have been convicted of various crimes (outlined in section I(g) of the proposal), that involve abuse or misuses of a position of trust, or felonies generally described in ERISA section 411." The Department notes that, in relevant part, neither the language nor the intent of the provision in Section I(g) changed between the proposed exemption and the final Prohibited Transaction Exemption 84-14.

⁶ See, for example, the following exemptions issued by the Department, involving foreign convictions: Citigroup Inc., PTE 2012-08, 77 FR 19344 (March 30, 2012); Royal Bank of Canada, PTE 2016-10, 81 FR 75147 (October 28, 2016); Northern Trust Corporation, PTE 2016-11, 81 FR 75150 (October 28, 2016); Deutsche Bank, PTE 2015-15 80 FR 53574,

asserts that the judgment of the French First Instance Court should not count as a conviction for purposes of Section I(g) until such time as all appeals have been exhausted, Section I(g) expressly provides that "a person shall be deemed to have been 'convicted' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal."

The Department notes, however, that if UBS/UBS France is ultimately exonerated on appeal, or if the Department were to reverse its view on the significance of the judgment of the French First Instance Court or on whether Section I(g) covers foreign convictions—the subject of the UBS QPAMs' advisory opinion request—the UBS QPAMs could continue to rely upon PTE 2017-07, irrespective of this separate exemption, assuming they meet the other conditions of PTE 2017-07, and there are no subsequent convictions. No change in exemption text is necessary for the UBS QPAMs in that circumstance.

Department's Response to Comment B. The Department declines to make the requested revision. Before granting

an exemption under Section 408(a) of ERISA, the Department must conclude that its conditions are protective of affected plans and IRAs. The Department does not believe the exemption is sufficiently protective if UBS is permitted to delay required notification until after the Department resolved the pending advisory opinion request. In order to make informed decisions, Plans and IRAs with assets managed by UBS QPAMs should be aware and informed, at the soonest possible date, of the circumstances that caused UBS to submit its request for this exemption, along with the terms of this exemption.⁷ Moreover, the sudden

⁷ PTE 2015-15, for example, required each Deutsche Bank QPAM to provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which were submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately resulted in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM on or before June 16, 2018, or the sponsor of an investment fund in any case where a DB QPAM acts as a subadvisor to the investment fund in which such ERISA-covered plan and IRA invests. In that exemption, the "term 'Convictions' means (1) the judgment of conviction against DB Group Services that was entered on April 18, 2017, in case number 3:15-cr- 00062-RNC in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in case number 3:15-cr-00062-RNC, and in the 'Criminal Acts' section pertaining to 'Defendant DSK' in the Decision of the Seoul Central District Court."

loss of an asset manager's status as a QPAM could, in some circumstances, be disruptive, harmful, and/or expensive for plans and IRAs with assets managed by the QPAM. Notice of the conviction, the new exemption, its terms, and duration, enable plans and IRAs to protect their interests and to plan for future contingencies.

Notwithstanding the foregoing, however, the Department recognizes that the UBS QPAMs do not agree that the French First Instance Judgment resulted in violation of Section I(g). Accordingly, the Department has modified Section I(k) so that the UBS QPAMs do not have to expressly acknowledge that the 2019 French Judgment Against UBS/UBS France resulted in a failure to meet a condition in PTE 84-14 and PTE 2017-07, but rather may simply recite that the Department of Labor has reached that conclusion

2. The Condition Making Future Foreign Convictions

Disqualifying Should Be Omitted.

Section I(1) of the Proposed Exemption provides that the exemption will "immediately terminate" in the event that "an entity within the UBS corporate structure" is

"convicted of a crime described in Section I(g) of PTE 84-14 . . . , **or** convicted **in a foreign jurisdiction** for a crime described in Section I(g) of PTE 84-14." (Emphases added.)

The Applicant requests the removal of the reference to foreign convictions in Section I(l). In support of its request the Applicant states the following:

(A) the Department has not included foreign convictions in any prior exemption, and should not do so for the first time in a short-term, temporary exemption at a time when an advisory opinion request has been made on the question of whether foreign convictions should be disqualifying under PTE 84-14;

(B) the inclusion of foreign convictions within Section I(l) is problematic and not administratively feasible, as it would require the Department to interpret and apply foreign law with which it is not familiar and has no expertise;

(C) the Department is exceeding its authority by imposing a *per se* disqualification that is more sweeping than the disqualification Congress enacted in Section 411 of ERISA; and

(D) there are superior alternatives available to the Department that are better suited to address concerns that may arise from a foreign conviction, including a case-by-case approach whereby the Department could assess whether to modify or revoke the exemption.

Department's Response to A. As noted above, it is the Department's view that Section I(g) of PTE 84-14 is not limited to crimes committed in the United States, and extends to crimes committed in foreign jurisdictions.⁸ The quoted text in Section I(l) was merely intended to remove any doubt as to the effect of any future foreign conviction, not to cast doubt upon the Department's past application of Section I(g) to such convictions. After consideration of the comment, the Department has revised the condition to make it clear that the exemption will "immediately terminate" if "an entity within the UBS corporate structure" is "convicted of a crime described in

⁸ See, for example, the following exemptions issued by the Department, involving foreign convictions: Citigroup Inc., PTE 2012-08, 77 FR 19344 (March 30, 2012); Royal Bank of Canada, PTE 2016-10, 81 FR 75147 (October 28, 2016); Northern Trust Corporation, PTE 2016-11, 81 FR 75150 (October 28, 2016); Deutsche Bank, PTE 2015-15 80 FR 53574, (September 4, 2015).

Section I(g) of PTE 84-14..., including a conviction in a foreign jurisdiction."

The Department stresses that a key purpose of Section I(g) is to ensure that a "QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity."⁹ Particularly in light of the 2019 French Judgment Against UBS/UBS France, the Department believes it is important to make clear when the UBS QPAMs would not be permitted to continue to rely on this exemption if any entity in the QPAM corporate structure is convicted of another serious foreign crime. In that circumstance, the Department would have significant cause for concern about the QPAMs' standards of integrity. Accordingly, they would be expected to submit a new application for an exemption based on full disclosure of the relevant facts and the Department's full evaluation of the significance of those facts.

Department's Response to Comment B. The Department does not agree that a condition that requires the UBS QPAMs to

⁹ Preamble to Proposed Prohibited Transaction Exemption 84-14, 47 Fed Reg. 56945, 56947 (Dec. 21, 1982).

avoid covered foreign convictions results in an exemption that is not administratively feasible for the Department to implement. Although foreign laws and legal structures can be complex, the Department can draw upon a variety of resources (including submissions by the applicant) to determine if a conviction falls within Section I(g), as well as to determine the weight that the Department should give the conviction in deciding whether to grant a new exemption and how to structure the exemption.

As noted above, the Department has previously granted exemptions following foreign convictions, without significant difficulty in administration. The question of whether a foreign conviction falls within such categories as a "felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary" or "income tax evasion", within the meaning of the exemption, is not inherently more difficult or less administrable than many of the questions that the Department routinely considers in the exemption process (e.g., questions relating to complex and unfamiliar financial transactions).

A service provider's conviction for a serious foreign

crime is relevant to a fiduciary's analysis of whether to retain the service provider, and it is similarly relevant to the Department's determination of whether to grant the service provider relief from otherwise prohibited transactions.¹⁰ The express reference to foreign convictions is necessary to safeguard the interests of plan participants and IRA owners.

Department's response to Comment C. Section 411 of ERISA enumerates specific crimes that disqualify convicted persons from acting as service providers and fiduciaries to ERISA-covered plans. The exemption condition, in contrast, conditions a QPAM's ability to engage in otherwise prohibited transactions on the QPAM's avoidance of serious criminal misconduct, so that the Department can have an appropriate level of confidence that the institution maintains a standard of high integrity.

In other words, Section 411 prohibits conduct that would otherwise be legal, while the exemption permits conduct that would otherwise be illegal. Section I(g) of

¹⁰ In this regard, when selecting or monitoring an asset manager, plan fiduciaries should not disregard foreign crimes committed by an entity within the asset manager's corporate structure, merely because the crimes may be complicated or difficult to interpret.

the QPAM exemption has always covered crimes that are not expressly covered by Section 411 of ERISA; it serves a related, but different, purpose than Section 411.

Section 408(a) of ERISA requires the Department to limit the availability of administrative exemptions to transactions and arrangements that are protective of, and in the interest of, affected plans and IRAs, and administratively feasible. As discussed above, the condition on foreign convictions is critical to the Department's determination that the exemption at issue here meets the statutory test.

Department's Response to Comment D. The Department disagrees with the comment. Another serious foreign conviction would call into question the basis for permitting the UBS QPAMs to engage in prohibited transactions. If a trial court makes a determination of criminal misconduct, it would be appropriate to place the burden of seeking a new exemption on the UBS QPAMs. At that time, the Department would expect full disclosure of the wrongdoing that resulted in the conviction; the reasons (if any) that the Department should not be concerned about

granting the QPAMs continued relief from ERISA's prohibited transaction provisions; and the basis for concluding that the UBS QPAMs will perform their fiduciary responsibilities with a high standard of integrity. The Department could then conduct a full analysis of whether and how to grant any further relief. This approach is both administrable and appropriately protective of the interests of plans, plan participants, and IRA owners.

Comment 3 - Proposed Modifications to the Conditions in PTE

2017-07 - Section I(a), I(b) and I(h) (2) .

The UBS QPAMs state that the exemption should contain the same conditions as PTE 2017-07 and those conditions should not have been modified for purposes of this one-year exemption. In the UBS QPAMs' view, the Department should not impose additional conditions, without first resolving whether the adverse judgment in the French First Instance Court constitutes a conviction under Section I(g) of PTE 84-14. Additionally, the UBS QPAMs state that the modifications to the conditions of PTE 2017-07 do not take into account the UBS QPAMs' record of compliance with the terms of their prior exemptions.

Section I(a) of the proposed exemption provides in part that "[t]he UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France), and employees of such UBS QPAMs and any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in: (1)the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France." Section I(b) of the proposed exemption provides that "[t]he UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs and any other parties engaged on behalf of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with (1)the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the

Potential 2019 French Judgment Against UBS/UBS France."

The UBS QPAMs state that requiring these conditions to apply to third parties effectively conditions the exemption on facts regarding third parties that the UBS QPAMs are not in a position to know or confirm, and that the conditions, therefore, are not in the interest of participants and beneficiaries. The UBS QPAMs additionally claim that the Department previously had found that the conditions described in PTE 2017-07 were sufficient to isolate the investment and compliance operations of the QPAMs from the influence of bad actors. The UBS QPAMs also argue that modifications to existing conditions that are specific to the conduct underlying prior convictions runs afoul of the Department's regulations at 29 C.F.R. § 2570.50. According to the UBS QPAMs, this regulation requires the Department notify the applicant of its proposed actions and reasons prior to publication of a notice proposing a modification or revocation. If the Department declines to delete the third party language entirely, the UBS QPAMs request that the language apply only to the Potential 2019 French Judgment Against UBS/UBS France.

Today the Department is granting a new exemption based

on the application from the UBS QPAMs and is not modifying PTE 2017-07. The Department has determined to modify section I(a) and I(b) from the language of the proposed exemption to reflect that the language "any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets" will be applicable only for purposes of the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France.

Accordingly, Section I(a) is revised in part as follows: "I(a) The UBS QPAMS (including their officers, directors, agents other than UBS, UBS Securities, Japan and UBS France, and the employees of such UBS QPAMs), did not have reason to know of, or participate in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know

of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France.”

Section I(b) is revised as follows: (b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the (1)the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France.”

Section I(h) (2) of the proposed exemption provides that “Any violation of, or failure to comply with an item

in subparagraphs (h) (1) (ii) through (h) (1) (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of UBS."

The UBS QPAMs request that the language regarding reporting uncorrected policy violations or compliance failures to "a fiduciary of any affected Covered Plan" should be omitted from the exemption. The UBS QPAMs state that the Department previously proposed this requirement in other exemptions but omitted the requirement from the final exemptions due to the concerns of the applicants. The UBS QPAMs claim it will be problematic to comply with this requirement because: it is uncertain when the uncorrected

violations or failures must be reported to the plan fiduciaries; due to a lack of materiality threshold, this requirement may prompt frequent reports of technical or insignificant violations requiring the expenditure of time and resources without any benefit to plans; and the condition is unclear on how many fiduciaries of a plan must receive the report. Moreover, the UBS QPAMs argue that requirement is unnecessary given the requirement that the independent auditor will evaluate any uncorrected violations or compliance failures and the violations will be addressed in audit reports which are publically available.

Given the requirement of the independent audit and the public availability of the audit report, the Department has determined not to include the additional requirement of separate notice to "a fiduciary of any affected Covered Plan." The Department has modified section I(h)(2) accordingly.

Comment 4(a) - Definition of "Conduct" that is the "Subject Of" an Adverse First Instance Judgment - Section II(b).

Section II(b) of the proposed exemption provides in

part "[f]or all purposes under this exemption, "conduct" of any person or entity that is the "subject of the alleged criminal conduct that may be the subject of the Potential 2019 French Judgment Against UBS/UBS France" encompasses any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment." The UBS QPAMS argue that unlike in prior exemptions that used a similar formulation of "conduct", UBS does not know at this time the specific conduct that will be described in any adverse judgment by the French First Instance Court. The UBS QPAMS claim that under French criminal procedure the description of the conduct would not be finalized until after the date of the adverse judgment, and possibly months later. The UBS QPAMS state they have no reason to believe they will be unable to satisfy conditions in the exemption to which the definition in Section II(b) would apply, but that they believe those conditions should only be operative after the written description of the judgment has been issued and the UBS QPAMS have opportunity to review the description. Therefore, the UBS QPAMS request that Section II(b) be revised to provide that any conditions based on the conduct described in any adverse First Instance

Judgment only become effective 60 days after the final written description for the judgment is issued.

The Department is not making the requested revision to the definition in Section II(b). The Department believes that UBS has sufficient information of the conduct at issue to comply with the exemption condition. However, the Department has revised Section II(b) to provide more clarity. To make the required findings under section 408(a) of ERISA, the Department concludes that the conditions relating to criminal conduct should be applied as of the effective date of the exemption.

**Comment 4(b) - Structure of UBS Compliance Function -
Section I(m)(1)(ii).**

The UBS QPAMs requested that Section I(m)(1)(ii) of the exemption be modified to correctly reflect the current structure of UBS's compliance function. Accordingly, the Department has deleted the phrase "the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer" from Section I(m)(1)(ii).

National Federation of Independent Business:

The Department received a comment from the National Federation of Independent Business (NFIB) stating the Department should afford interested persons a longer time period to view files with respect to proposed exemptions, and to comment on the exemptions. The NFIB states that longer time periods are necessary to afford them the notice and opportunity to be heard to which the law entitles them, and would give the Department the time necessary to make better-informed decisions. NFIB also claims that the Department should take greater care to ensure compliance with the procedural requirements set by statute for the grant of exemptions in order to avoid the risk of successful legal challenges to its exemptions.

In response to these assertions, the Department stresses that the comment period was appropriate under the circumstances of this particular proposed exemption. The period was necessarily limited because of the potential for an adverse judgment in the French First Instance Court on February 20, 2019, which could prevent the UBS QPAMs from continuing to rely upon the relief provided by PTE 84-14 and potentially cause harm to participants and beneficiaries. This exemption is for a temporary one-year

period and if the UBS QPAMs apply for longer term exemptive relief, the Department will consider and afford a longer comment period for such relief, as appropriate.

SIFMA Comment:

The Department received a comment from the Securities Industry and Financial Markets Association (SIFMA) urging the Department to issue an advisory opinion that section I(g) does not encompass foreign crimes. SIFMA states that if the Department does not issue the requested advisory opinion to SIFMA that section I(g) does not encompass foreign crimes, and declines to issue an advisory opinion to UBS on the effect of the French judgment on section I(g), and instead moves forward with this proposed temporary exemption application, it should delete the condition in section 1(l) that adds foreign convictions to the type of convictions that would cause the exemption to be immediately unavailable.

SIFMA argues that all the considerations described in *Small v. United States*¹¹ in support of the Court's construction of a statute are also relevant in determining whether exemption conditions based on foreign convictions

¹¹ See *Small v. United States*, 544 U.S. 385, 388-89 (2005).

meet the administratively feasible requirement of ERISA section 408(a). According to SIFMA, in order to make a determination that any foreign conviction should be disqualifying, the Department would have to understand and apply the criminal laws and criminal procedures of any one of hundreds of foreign countries, as well as the cases decided under those laws. In SIFMA's view, the reasons cited by the Supreme Court in *Small* as weighing against asking prosecutors or judges to "refine" these "definitional distinctions" on the facts of that case equally weigh against the Department's finding that an exemption referencing foreign convictions is administratively feasible within the meaning of ERISA section 408(a)(1). This is especially true, according to SIFMA, where the likelihood of "getting it wrong" is high, in light of the complexities and vagaries of foreign law." The Department's response to UBS's comments above, particularly UBS's comments on whether the exemption is administratively feasible, effectively address these points.

In light of the 2019 French Judgment Against UBS/UBS France, the Department believes it is important to make

clear when the UBS QPAMs would not be permitted to continue to rely on this exemption if a member of the UBS corporate family is convicted of another serious foreign crime. In that circumstance, the Department would have still greater cause for concern about whether the UBS QPAMs and those in a position to influence their policies, maintain high standards of integrity and about the appropriateness of relief from the prohibited transaction provisions, which were enacted to protect plans, participants, and IRA owners from potentially abusive transactions. In that circumstance, the Department has concluded that it would be appropriate for the UBS QPAMs to seek a new exemption based upon a full consideration of the record and the misconduct at issue, rather than to rely upon an exemption that predates the new misconduct and the Department's consideration of that misconduct. The Applicants have also commented on the condition in section I(1) and the comment has been addressed above.

Comments from the Public:

The Department received two comments from the public. One commenter stated that he thought the exemption was a

"good rule." A second commenter noted that he agreed with the Department that performance of the exemption audit on less than an annual basis will weaken an important plan protection. This commenter also stated that he agreed that an annual review by an independent auditor of a QPAM's written policies and procedures and a representative sample of plan transactions is necessary to address the lack of QPAM independence. Lastly, this commenter noted that he agreed with the Department's assessment of costs associated with the exemption audit and expressed approval for the "proposed amendments."

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a

prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

SECTION I. COVERED TRANSACTIONS

Certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Sections II(e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),¹² notwithstanding the

¹² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as "PTE 84-14" or the "QPAM Exemption."

2013 Conviction of UBS Securities Japan Co., Ltd., the 2018 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the 2019 French Judgment Against UBS/UBS France (as defined in Section II(b)) during the Exemption Period, provided that the following conditions are satisfied:¹³

(a) The UBS QPAMS (including their officers, directors, agents other than UBS, UBS Securities, Japan and UBS France, and the employees of such UBS QPAMS, did not have reason to know of, or participate in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France. Further, any other party engaged on behalf of such UBS QPAMS who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject

¹³Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

of the 2019 French Judgment Against UBS/UBS France. For purposes of this exemption, "participate in" refers not only to active participation in the FX Misconduct, the misconduct underlying the Convictions, and the misconduct underlying the 2019 French Judgment Against UBS/UBS France, but also to knowing approval of that misconduct, or knowledge of such misconduct without taking active steps to prohibit such conduct, such as reporting the conduct to supervisors, including the Board of Directors;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation,

in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France.;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals who participated in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France;

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions and the 2019 French Judgment Against UBS/UBS France;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-

covered plan and IRA assets; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division, UBS Securities Japan, and UBS France; this condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly

participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the UBS QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the UBS QPAM's knowledge at that time, the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The UBS QPAM complies with the terms of this exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (h)(1)(vi), is

corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted during the Exemption Period, for all relevant UBS QPAM asset/portfolio

management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than six (6) months after the end of the exemption period. For time periods ending prior to the judgment against UBS or UBS France by the French First Instance Court and covered by

the audit required pursuant to PTE 2017-07,¹⁴ the audit requirements in Section I(i) of PTE 2017-07 will remain in effect. The audit under PTE 2017-07 covering the time period from January 10, 2018 until the date of the judgment against UBS or UBS France by the French First Instance Court must be completed within six (6) months of the date of any such judgment, and the corresponding certified Audit Report must be submitted to the Department no later than 45 days following the completion of such audit;¹⁵

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor

¹⁴ 82 FR 61903 (December 29, 2017). PTE 2017-07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the 2013 and 2018 Convictions.

¹⁵ Pursuant to PTE 2017-07, the initial audit period begins on January 10, 2018 and ends on March 9, 2019, and the corresponding Audit Report must be completed by September 9, 2019 and the Audit Report submitted to the Department within 45 days after completion. Accordingly, the last audit performed pursuant to PTE 2017-07 will cover the period beginning January 10, 2018 and ending on the date of judgment against UBS or UBS France by the French First Instance Court. The corresponding Audit Report must be completed within six months of the judgment and submitted to the Department within 45 days of completion.

unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(i)(1) for completing

the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section

I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors

is provided a copy of the Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required under the terms of this exemption that is entered subsequent to the date of the judgment against UBS or UBS France by the French First

Instance Court must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of the date of the judgment against UBS or UBS France by the French First Instance and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited

transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions and the 2019 French Judgment Against UBS/UBS France. This condition applies only to actual losses caused by the UBS QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed

account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017-07, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled

fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates, or damages arising from acts outside the control of the UBS QPAM;

(7) Within six months of the date of the judgment against UBS or UBS France by the French First Instance Court, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the date of the judgment, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and

such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-17 and/or PTE 2017-07 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of the judgment against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the 2019 French Judgment Against UBS/UBS France (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and, in the Department's view, the 2019 French Judgment Against UBS/UBS France, each separately result in a failure to meet a condition in PTE 84-14 and PTE 2017-07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Effective as of

the date that is 60 days after the 2019 French Judgment Against UBS/UBS France Date, all Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically;

(l) The UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions and the 2019 French Judgment Against UBS/UBS France. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the 2013 Conviction, 2018 Conviction, and the 2019 French Judgment Against UBS/UBS France), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this exemption would terminate immediately;

(m) (1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible

for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review for the Exemption Period (the Exemption Review),¹⁶ to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions- including Asset Management, the Investment Bank, and Global

¹⁶ Pursuant to PTE 2017-07 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in Section I(i)(1) of PTE 2017-07 and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2017-07 must cover the period January 10, 2018 through the date of the judgment against UBS or UBS France by the French First Instance Court, and the corresponding Compliance Officer's written report must be submitted within three (3) months of the judgment.

Wealth Management-and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the UBS QPAMs' compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017-07; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and

any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates, and to the head of compliance

and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(o) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the U.S. Commodity Futures Trading Commission Order, dated December 19, 2012;

(p) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any

transaction for which such UBS QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, UBS must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within six months from the date of the judgment against UBS or UBS France by the French First Instance Court, each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed,

each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹⁷ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption, solely because a different UBS QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates.

SECTION II. DEFINITIONS

(a) The term "Convictions" means the 2013 Conviction and the 2017 Conviction. The term "2013 Conviction" means

¹⁷ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term "2018 Conviction" means the judgment of conviction against UBS in case number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of the Convictions" encompasses any conduct of UBS and/or their personnel, that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19,

2012, in connection with case number 3:12-cr-00268-RNC;

(b) The term "2019 French Judgment Against UBS/UBS France" includes any adverse judgment against UBS or UBS France regarding case Number 1105592033. For all purposes under this exemption, "conduct" of any person or entity that is the "criminal conduct that is the subject of the 2019 French Judgment Against UBS/UBS France", includes any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment;.

(c) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) The term "FX Misconduct" means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

(e) The term "UBS QPAM" means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14)¹⁸ and that relies on the relief provided by PTE 84-14, and with respect to which UBS is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "UBS QPAM" excludes UBS securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction, UBS, the entity implicated in the

¹⁸ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

criminal conduct that is the subject of the 2018 Conviction and implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France, and UBS France, the entity implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Judgment Against UBS/UBS France.

(f) The term "UBS" means UBS AG.

(g) The term "UBS France" means "UBS (France) S.A.," a wholly-owned subsidiary of UBS incorporated under the laws of France.

(h) The term "UBS Securities Japan" means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(i) All references to "the date of the judgment by the French First Instance Court" refer to any judgment against UBS or UBS France in case number 1105592033;

(j) The term "Exemption Period" means one year beginning on the date of the French First Instance judgment against UBS or UBS France regarding case Number 1105592033;

(k) The term "Plea Agreement" means the Plea Agreement (including Exhibits 1 and 3 attached thereto)

entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

Effective Date: This exemption will be in effect for one year from the date of the judgment in the French First Instance Court against UBS and/or UBS France in case number 1105592033.

Signed at Washington, DC, this 21st day of February, 2019.

Lyssa Hall, Director
Office of Exemption Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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